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15 APPLE INC., A CALIFORNIA CORPORATION

16  
17 UNITED STATES DISTRICT COURT  
18  
19 NORTHERN DISTRICT OF CALIFORNIA  
20  
21 SAN JOSE DIVISION

22 In re iPhone Application Litigation

23 CASE NO. 11-MD-02250-LHK

24 **CLASS ACTION**

25 **DECLARATION OF S. ASHLIE BERNING  
26 IN SUPPORT OF APPLE INC.'S MOTION  
27 FOR SUMMARY JUDGMENT**

28 **HEARING:**

Date: April 11, 2013  
Time: 1:30 p.m.  
Place: Courtroom 4  
Judge: The Honorable Lucy H. Koh

1 I, S. Ashlie Beringer, declare as follows:

2 1. I am an attorney duly licensed to practice before this Court. I am a partner with the  
 3 law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. (“Apple”) in  
 4 this case. I submit this Declaration in support of Apple’s Motion for Summary Judgment. I have  
 5 personal knowledge of the matters stated herein and, if called as a witness, could and would testify  
 6 competently thereto.

7 2. Attached as **Exhibit A** is a true and correct copy of excerpts from the reporter’s  
 8 transcript of the August 14, 2012 deposition of Plaintiff Cameron Dwyer.

9 3. Attached as **Exhibit B** is a true and correct copy of excerpts from the reporter’s  
 10 transcript of the August 15, 2012 deposition of Plaintiff Anthony Chiu.

11 4. Attached as **Exhibit C** is a true and correct copy of excerpts from the reporter’s  
 12 transcript of the October 29, 2012 deposition of Plaintiff Alejandro Capiro.

13 5. Attached as **Exhibit D** is a true and correct copy of excerpts from the reporter’s  
 14 transcript of the October 30, 2012 deposition of Plaintiff Isabella Capiro.

15 6. Attached as **Exhibit E** is a true and correct copy of excerpts from the reporter’s  
 16 transcript of the August 4, 2012 deposition of former Plaintiff Arun Gupta.

17 7. Attached as **Exhibit F** is a true and correct copy of a screen image for the  
 18 Dictionary.com app in the Apple iTunes App Store, captured on December 13, 2012. Links to  
 19 Dictionary.com’s Privacy Policy and License Agreement have been highlighted by a red box.

20 8. Attached as **Exhibit G** is a true and correct copy of Dictionary.com’s Privacy Policy,  
 21 which is noticed and reflected in the “Privacy Policy” link reflected in Exhibit F, and also available at  
 22 <http://dictionary.reference.com/help/privacy.html>.

23 9. Attached as **Exhibit H** is a true and correct copy of Dictionary.com’s End User  
 24 License Agreement (“EULA”), which is noticed and reflected in the “License Agreement” link in  
 25 Exhibit F, and also available at <http://dictionary.reference.com/help/dictionaryappeula.html>.

26 10. Attached as **Exhibit I** is a true and correct copy of the screen image that appears when  
 27 a user launches the Flixster app on his or her iPhone for the first time, captured on December 13,  
 28 2012. Links to Flixster’s Privacy Policy and Terms of Use have been highlighted by a red box.

11. Attached as **Exhibit J** is a true and correct copy of Flixster's Privacy Policy, which is noticed and reflected in the "Privacy Policy" link reflected in Exhibit I, and available at <http://www.flixster.com/docs/privacy/>.

12. Attached as **Exhibit K** is a true and correct copy of Flixster's Terms of Use, which is noticed and reflected in the "Terms of Use" link reflected in Exhibit I, and available at <http://www.flixster.com/docs/terms/>.

13. Attached as **Exhibit L** is a true and correct copy of a letter dated June 29, 2012, from me to plaintiffs' counsel, Scott A. Kamber.

14. Attached as **Exhibit M** is a true and correct copy of a letter dated July 9, 2012, from plaintiffs' counsel, Scott A. Kamber, to me in response to the letter marked as Exhibit L.

15. Attached as **Exhibit N** is a true and correct copy of excerpts from the reporter's transcript of the November 30, 2012 deposition of Apple employee Erik Neuenschwander.

16. Attached as **Exhibit O** is a true and correct copy of excerpts from the reporter's transcript of the October 2, 2012 deposition of Apple employee Guy "Bud" Tribble.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 14, 2012 in Palo Alto, California.

/s/ S. Ashlie Beringer

S. ASHLIE BERNING